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Supreme Court, U.S.
FILED

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In The

Supreme Court of the United States

OCTOBER TERM 2009

ARTEMIO MARCOS ABAD, INDIVIDUALLY AND AS TRUSTEE OF THE ARTEMIO M. ABAD REVOCABLE TRUST; GLORIA PASCUA ABAD, INDIVIDUALLY AND AS TRUSTEE OF THE GLORIA P. ABAD REVOCABLE,
Petitioners,

vs.

FINANCE FACTORS, LIMITED; CENTRAL PACIFIC BANK, SUCCESSOR-IN-INTEREST TO CITY BANK; DIRECTOR OF BUDGET AND FISCAL SERVICES, CITY AND COUNTY OF HONOLULU; AMERICAN GENERAL FINANCE, INC.; ERLINDA GONZALES AND WILSON U. PASCUA, INDIVIDUALLY AND DOING BUSINESS AS HONLAND REALTY,
Respondents.

On Petition For Writ Of Certiorari To The Supreme Court Of The State Of Hawaii

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Did the Hawaii State Courts violate the Due Process Clause of the United States Constitution by granting foreclosure summary judgments against the real properties of a Husband based upon a United States Bankruptcy Court's In Rem Order in his Wife's Bankruptcy Case, similarly entered in violation of the Due Process Clause of the United States Constitution, voiding the automatic stay in the Husband's subsequent Bankruptcy Case, where in his Wife's Bankruptcy Case he was not a party and had no notice or opportunity to be heard prior to the entry of the Bankruptcy Court's In Rem Order?

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PETITION FOR A WRIT OF CERTIORARI

I. JURISDICTIONAL STATEMENT

This Court has jurisdiction to review this *Petition for a Writ of Certiorari*, timely filed by U.S. Mail on August 19, 2010, within ninety days of the denial of certiorari review by the Supreme Court of the State of Hawaii on May 21, 2010 of the Hawaii Intermediate Court of Appeals affirmation of the decision of the First Circuit Court on the State of Hawaii on December 28, 2009, pursuant to Section 1257(a) of Title 28 of the United States Code and Supreme Court Rules 10(c) and 13(1).

II. AUTHORITATIVE PROVISIONS

The decisions being challenged, as in violation of Section 362 of Tile 11 of the United States Code and the Due Process and Supremacy Clauses of the United States Constitution, are set forth in the Appendix to this Petition.

III. STATEMENT OF THE CASE

This Petition arises from a foreclosure lawsuit in the Circuit Court of the First Circuit of the State of Hawaii, in which the State Circuit Court ordered the foreclosure of mortgages on two real properties known as the "Pearl City Property" and the "Salt Lake Property," each of which were jointly owned by Petitioners Artemio and Gloria Abad, Husband and Wife.

In United States bankruptcy proceedings in which Petitioner Gloria Abad was a party/petitioner, the United States Bankruptcy Court for the District of Hawaii issued an "*in rem*" order affecting her Husband, Petitioner Artemio Abad's interest in the two real properties, subject to a Circuit Court foreclosure action, without having ever afforded him notice of the pendency of those bankruptcy case

proceedings or allowing him an opportunity to be heard or object, upon which order the Circuit Court erroneously relied in confirming the foreclosure sale of those properties over Petitioners' objections.

Petitioners twice moved for relief from the Circuit Court's subsequent foreclosure orders confirming the sales of the two properties, having argued that those orders were void because the Circuit Court originally lacked jurisdiction, pursuant the automatic stay provisions of Section 362 of Tile 11 of the United States Code and the decision of the Hawaii Intermediate Court of Appeals in Island Insurance Co., Inc. v. Santos, 86 Hawaii 363, 949 P.2d 203 (App. 1997), recognizing the Supremacy of the federal automatic stays, to auction the subject properties and to confirm the subject foreclosure sales.

Petitioners maintain that the automatic stay issued in Gloria Abad's bankruptcy case was erroneously lifted "*in rem*" by the Bankruptcy Court, thus affecting Artemio Abad's interests in the subject properties in violation of his due process property rights, and similarly preventing him from himself obtaining a stay of the Circuit Court foreclosure action in his own bankruptcy case.

To the extent that the Bankruptcy Court's order affected Artemio Abad's interest in the subject properties and his ability to himself obtain a separate stay due to the *in rem* nature of that order, Petitioners insist that the Bankruptcy Court lacked jurisdiction to affect Artemio Abad's property rights, and in any event, that its issuance of that *in rem* order violated his due process rights, having deprived him of his interests in the subject real properties without first affording him notice of those proceedings or an opportunity to be heard.

Therefore, Petitioners contend that Artemio Abad was not a person properly before the

Bankruptcy Court in his Wife's proceeding, that the Bankruptcy Court lacked jurisdiction to issue that *in rem* order, and that it nevertheless acted in a manner inconsistent with due process of law. Therefore, the state circuit court and its appointed foreclosure commissioner lacked jurisdiction to sell Petitioners' real properties and/or to confirm those sales, and the Hawaii Intermediate Court of Appeals in affirming the State Circuit Court's legally void orders and judgments gravely erred by dismissing the State Court Appeal.

The proceedings below were summarized by the Hawaii Intermediate Court of Appeals, which affirmed the State Circuit Court, as follows **[comments added]**:

> City Bank filed a complaint to foreclose on the Salt Lake Property against the Abad Defendants, Finance Factors, Defendants/Cross-Claim Defendants/ Appellees the Director of Budget and Fiscal Services of the City and County of Honolulu (the City) and Felix Pascua.
>
> Finance Factors asserted a counterclaim for foreclosure against City Bank and a cross-claim for foreclosure against the Abad Defendants, the City, and Felix Pascua. Finance Factors also asserted a third-party complaint for foreclosure against American General, and Third-Party Defendants Erlinda Gonzales (Gonzales) and Wilson U. Pascua doing business as Honland Realty (Wilson Pascua).
>
> Thereafter, the following events

occurred:

• The circuit court entered the March 4, 2002 Foreclosure Order, granting Finance Factors' motion for default judgment against the Abad Defendants and Felix Pascua, and summary judgment against all other parties on Finance Factors' counterclaim, Finance Factors' cross-claims, and Finance Factors' third-party claims.

• On March 4, 2002, the circuit court entered an HRCP Rule 54(b) certified judgment of foreclosure in favor of Finance Factors and (a) against City Bank on Finance Factors' counterclaim, (b) against the Abad Defendants, the City, and Felix Pascua on Finance Factors' cross-claim, and (c) against American General, Gonzales, and Felix Pascua on Finance Factors' third-party complaint.

• The circuit court entered the June 20, 2002 Foreclosure Order granting City Bank's motion for summary judgment against the Abad Defendants, Finance Factors, the City and Felix Pascua on City Bank's complaint for foreclosure.

• On June 20, 2002, the circuit court entered an HRCP 54(b) certified judgment of foreclosure in favor of City Bank and against the Abad Defendants, Finance Factors, the City, and Felix Pascua as to City Bank's complaint for foreclosure.

[On July 1, 2002, Petitioner Gloria

Abad filed a Petition for Chapter 7 bankruptcy.]

• On August 8, 2002, the United States Bankruptcy Court for the District of Hawai'i (Bankruptcy Court) granted Finance Factors' unopposed motion for relief from the automatic stay caused by the filing of Gloria Abad's bankruptcy petition. This relief from the stay was granted "'in rem' because the Debtor and other persons who claim an interest in the Property have not acted in good faith to reorganize or seek discharge of their debts. . . . As used herein, 'in rem' relief means that the relief from stay is granted not only personally against the Debtor but with respect to the subject property."

[On September 4, 2002 Petitioner Artemio Abad filed his own voluntary Chapter 13 bankruptcy petition.]

• After a motion and hearing, the Bankruptcy Court granted City Bank relief from the automatic stay created by Gloria Abad's petition for bankruptcy. This September 9, 2002 order was also granted "in rem" but applied to the Salt Lake Property only. Notice of this order was served on the Abad Defendants' attorney on September 13, 2002 [after the fact of its entry].

• On October 8, 2002, the foreclosure auction for the Salt Lake Property and the Pearl City Property occurred.

[On October 28, 2002, Petitioner

Artemio Abad's bankruptcy case was dismissed.]

[On November 7, 2002, Petitioners opposed confirmation of the public sales based on the plain fact that the auctions had taken place while Petitioner Artemio Abad's automatic bankruptcy stay was in effect, notwithstanding the Bankruptcy Court's subsequent, so-called *in rem* order, supra, which was entered in Petitioner Gloria Abad's bankruptcy case prospectively, since such *in rem* orders, even if entered retroactively, have been universally ruled to be unconstitutional if applied to persons, including spouses, not parties to an *in rem* proceeding.]

• On November 14, 2002, Gloria Pascua Abad filed a notice of appeal from the June 20, 2002 Foreclosure Order, which the supreme court clerk docketed as supreme court case number 25474.

• On November 14, 2002, the Abad Defendants moved the circuit court to set aside the March 4, 2002 Foreclosure Order pursuant to HRCP 60(b), arguing that the circuit court lacked subject matter jurisdiction based on their claim that the mortgage loan was void as it was made with an unlicensed mortgage broker.

• On December 24, 2002, the circuit court denied the Abad Defendants' HRCP 60(b) motion to set aside the March 4, 2002 Foreclosure Order.

• On January 15, 2003, the Abad Defendants filed a notice of appeal from the December 24, 2002 order denying the Abad Defendants' HRCP 60(b) motion to set aside the March 4, 2002 Foreclosure Order, which the supreme court clerk docketed as supreme court case number 25587.

• On February 12, 2003, the circuit court entered an order and HRCP Rule 52(b) certified judgment confirming the sales of the Salt Lake Property and the Pearl City Property to third-party purchasers and directing the distribution of the sales proceeds.

• On March 14, 2003, the Abad Defendants filed a notice of appeal from the February 12, 2003 order and the February 12, 2003 HRCP 54(b) judgment, which the supreme court clerk docketed as supreme court case number 25693.

• On January 12, 2005, we [Hawaii Intermediate Court of Appeals] issued a published opinion on the consolidated appeals of supreme court case numbers 25474, 25587, and 25693 that dismissed parts of the appeal and affirmed the orders that were the subject of the remaining parts of the appeal. City Bank v. Abad, 106 Hawai'i 406, 105 P.3d 1212 (App. 2005) (Abad I). In this opinion, we

• Dismissed the appeal in number 25474 as untimely,

• Dismissed the appeal in number 25693 as untimely in part and premature in part, and

• In number 25587, dismissed the appeal from the circuit court's November 14, 2002 oral confirmation of the foreclosure sales and affirmed the December 24, 2002 order denying the Abad Defendants' November 14, 2002 HRCP Rule 60(b) motion.

• In so doing, we ruled that the Abad Defendants had not shown the Bankruptcy Court's "in rem" orders lifting the automatic bankruptcy stay as to Finance Factors and City Bank were invalid, either because the Bankruptcy Court "lacked jurisdiction of the parties or otherwise acted in a manner inconsistent with due process of law." Abad I, 106 Hawai'i at 411, P.3d at 1217.

• Central Pacific Bank became City Bank's successor-in-interest in this case as the result of a corporate merger between Central Pacific Bank and City Bank.

On February 21, 2006, the Abad Defendants again moved the circuit court pursuant to HRCP Rule 60(b) to set aside (1) the March 4, 2002 Foreclosure Order, (2) the June 20, 2002 Foreclosure Order, and (3) all subsequent orders and judgments that the circuit court entered pursuant thereto. The circuit court denied this motion by way of its April 25, 2006

> Post-Judgment Order. On May 24, 2006, the Abad Defendants filed a notice of appeal from the April 25, 2006 Post-Judgment order.

See Appendix 3.

The Hawaii Intermediate Court of Appeals dismissed the Petitioners' Appeal on December 28, 2009 Summary Disposition Order, concluding that the appeal was moot because Petitioners had not posted a *supersedeas* bond to stay the State Circuit Court's order confirming the foreclosure sales.

Petitioners had filed with the Hawaii Intermediate Court of Appeals Petitioners Gloria Abad's entire certified record in her Bankruptcy Case No. 02-02358, certified by Mark Van Allsburg, Clerk of the Bankruptcy Court, District of Hawaii, which is available to this Court on PACER, which complete bankruptcy case record irrefutably demonstrates that Petitioner Artemio Abad was never given notice and/or afforded an opportunity to be heard prior to the Bankruptcy Court's entry of its August 8, 2002 and September 9, 2002 *in rem* orders in Gloria's bankruptcy case, which *in rem* orders affected Artemio's interest in his real properties.

IV. LEGAL ARGUMENT

Federal case law interpreting the Due Process and Supremacy Clauses of the United States Constitution, holds that a bankruptcy court's *in rem* order in a bankruptcy proceeding applying to others not parties thereto, especially to other debtors whose bankruptcy cases were filed prior thereto, would clearly be an egregious violation due process and federal bankruptcy rights.

For example, the Bankruptcy Court in Great Western Bank v. Snow, 201 B.K. 968, 971 (Bk. C.D.

Cal. 1996) has explained:

> Due process considerations, however, prohibit the issuance of an order binding the co-owners; the court has no jurisdiction over them, since they have not been brought before the Court.

Id. at 971. *See also*, In re Cherokee New York Investments, 1995 WL 548182 (Bk. E.D.N.Y. 1995).

Indeed, as Petitioners argued to the State Circuit Court in opposing confirmation of the foreclosure sales, some bankruptcy courts have, for instance, expressly embraced the alternative concept of imposing an "equitable servitude" running with the land to get around the otherwise obvious constitutional barrier (which however was not done in Petitioners' bankruptcy cases), recognizing that such *in rem* relief against nonparties by itself is clearly unconstitutional, and even in that event the equitable servitude was still said to bind only *subsequent* takers of title and not spouses already on title as here. Snow v. Great Western Bank, 201 B.R. 968 (C.D. Calif. 1996).

In Snow, for example, that Bankruptcy Court expressly held that an adversary proceeding would be required (which was not done in Petitioners' bankruptcy cases either) against the nonparty spouse before such *in rem* relief, standing alone, would be constitutional. *Id. See also*, In re Chappelle, 2000 Bankr. LEXIS 1910 (D.C. 2000); In re Yimam, 214 B.R. 463 (Md. 1997), both courts holding that *in rem* orders can constitutionally operate only to bar "subsequent purchasers" and not previous title holders, such as a debtor's current spouse, as here.

The reason for denying blanket *in rem* relief,

to further emphasize the obvious, is because if a court were to thus affect the rights of persons not properly before it, procedural due process of law would be grossly and abusively violated. Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 314 (1950); Bank of Martin v. England, 385 U.S. 99, 102 (1966). That bedrock procedural due process concept is nothing new.

The leading federal cases in consumer procedural due process of law are well known: Sniadach v. Family Finance Corp., 395 U.S. 337 (1969) (striking down a state statute permitting the garnishment of wages without notice and opportunity for hearing); Fuentes v. Shevin, 407 U.S. 67 (1972) (striking down two state replevin statutes allowing repossession without notice or hearing); and North Georgia Finishing, Inc. v. Di-Chem, Inc., 49 U.S. 601 (1975) (striking down a state garnishment statute allowing impounding without notice or an opportunity for early hearing).

More recently, in United States v. James Daniel Good Real Property, 519 U.S. 43, 53 (1993), this Court took another opportunity, this time with respect to civil forfeiture laws, to reaffirm the Sniadach-Fuentes-North Georgia line of cases, holding that "the right to prior notice and a hearing is central to the Constitution's command of due process . . . 'to protect . . . use and possession of property from arbitrary encroachment – to minimize deprivation of property'".

Hawaii has also been a leader in the preservation of procedural due process rights, Hawaii's appellate courts having repeatedly, whether reversing or otherwise, continually reaffirming the due process requirements of notice and hearing in numerous cases brought before our appellate courts in recent years in virtually every

conceivable context, KNG Corporation v. Kim, 107 Hawaii 73, 80, 82, 110 P.3d 397, *reconsideration denied*, 107 Haw. 348, 113 P.3d 799 (2005) (holding that notice and an opportunity to be heard are "the basic elements of procedural due process of law," in the context of the imposition of a rent trust fund); Bank of Hawaii v. Kunimoto, 91 Hawaii 372, 388, 984 P.2d 1198 (1999) (holding that a criticized *pro hac vice* attorney had a right to notice and a hearing); State v. Christian, 88 Hawaii 407, 424, 967 P.2d 239 (1998) (holding that a criminal Appellant must be given notice and a reasonable opportunity to defend); Korean Buddhist Dae Won Sa Temple of Hawaii v. Sullivan, 87 Hawaii 217, 243, 953 P.2d 1315 (1998) (reaffirming notice and the right to be heard in a height variance dispute, otherwise finding harmless error); Kerman v. Tanaka, 75 Haw. 1, 22, 27-28, 856 P.2d 1207, *cert. denied*, 510 U.S. 1119 (1993) (upholding an administrative revocation of driver's license where notice and opportunity to be heard were protected); Evans v. Takao, 74 Haw. 267, 282-283, 842 P.2d 255 (1992) (holding that notice and an opportunity to be heard are required in contempt proceedings); Sandy Beach Defense Fund v. City Council of City and County of Honolulu, 70 Haw. 261, 378, 773 P.2d 250 (1989) (holding that use permits require notice and opportunity to be heard, otherwise finding no due process violation); In re Smith, 68 Haw. 466, 471, 719 P.2d 397 (1986) (holding that the Hawaiian Homes Commission writ-of-assistance lease cancellation and seizure violated due process because of lack of notice and a hearing).

All actions taken by a State Court against a debtor's property after a bankruptcy petition is filed are considered to be null and void, Schwartz v. United States, 954 F.2d 569, 571 (9th Cir. 1992) ("Given the importance and fundamental purpose of the automatic stay, and the broad debtor protections of the Bankruptcy Code, we find that Congress

intended violations of the automatic stay to be void rather than voidable."). See also, Executive Square Office Building v. O'Connor and Associates, Inc., 19 B.R. 143, 147 (N.D. Fla. 1981); cf. Waimanalo Village Residents' Corporation v. Young, 87 Hawaii 353, 956 P.2d 1285 (App. 1998).

The State Circuit Court nevertheless disregarded such clear controlling precedent, and erroneously denied Petitioners' requested Rule 60(b)(4) relief, having originally lacked jurisdiction pursuant the automatic stay provisions of Section 362 of Tile 11 of the United States Code to auction the subject properties and to confirm the subject foreclosure sales.

Worse, on appeal, the Hawaii Intermediate Court of Appeals completely ignored such sensitive due process and federal supremacy issues, stating simply without any relevant legal analysis that Petitioners "did not show that the Bankruptcy Court's order lifting its stay over the properties in question was invalid." Appendix 3, at 8.

However, not only was the Bankruptcy Court's *in rem* order invalid against Petitioner Artemio Abad as a matter of law, but the record in this case completely satisfies the ICA's earlier evidentiary concerns explained in Abad 1:

> The record of this case, however, does not contain the factual basis necessary to support the legal argument. Nothing in the record of this case shows that Artemio was not a person "properly before" the bankruptcy court in Gloria's bankruptcy case or that he lacked notice and an opportunity to be heard prior to the bankruptcy court's entry of its August 8, 2002 and September 9,

2002 orders in Gloria's bankruptcy case.

Abad I, 106 Hawaii at 412, 105 P.3d at 1218.

The complete certified record of Petitioner Gloria Abad's bankruptcy case, which was filed in conjunction with Petitioners Rule 60(b) motion irrefutably demonstrates that Artemio Abad was not a person properly before the Bankruptcy Court, and that he was never afforded notice and an opportunity to be heard.

Thus, the ICA's December 28, 2009 Summary Disposition Order is clearly and gravely erroneous, yet the Hawaii Supreme Court refused review.

V. CONCLUSION

For all of the foregoing reasons, the Petition should be granted pursuant to the Due Process and Supremacy Clauses of the United States Constitution.

Respectfully submitted,

/s/ Gary Victor Dubin

GARY VICTOR DUBIN
Counsel of Record

FREDERICK J. ARENSMEYER
Attorneys for Petitioner

Honolulu, Hawaii
August 19, 2010

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APPENDIX

1. **Order Granting Movant and Secured Creditor City Bank's Motion for Relief from the Automatic Stay Filed September 9, 2002**

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF HAWAII

In re	Case No. 02-02358
	(Chapter 7)
GLORIA P. ABAD,	
	ORDER GRANTING
Debtor.	MOVANT AND
	SECURED CREDIT CITY
	BANK'S MOTION FOR
	RELIEF FROM THE
	AUTOMATIC STAY;
	EXHIBIT "A"
	Hearing
	Date: August 21, 2002
	Time: 1:30 p.m.
	Judge: The Honorable
	Robert J. Farris

ORDER GRANTING MOVANT AND SECURED CREDITOR CITY BANK'S MOTION FOR RELIEF FROM THE AUTOMATIC STAY; EXHIBIT "A"

Movant and Secured Creditor CITY BANK filed its Motion for Relief from Automatic Stay (hereinafter "Motion") herein on July 19, 2002. The Motion came on for hearing on August 14, 2002 at 1:30 p.m. and was continued to August 21, 2002 at 1:30 p.m. At the continued hearing, Peter Aduja, Esq. appeared on behalf of Debtor Gloria P. Abad and Mitzi A. Lee, Esq. appeared on behalf of City Bank.

The Court has heard the arguments of counsel and has carefully considered the Motion, the Notice of Hearing, the Memorandum in Support of the Motion, the Declaration of Ed Castro, the Declaration of Mitzi A. Lee, Debtor Gloria Abad's Opposition and all other relevant documents contained in the file herein, and based upon such consideration, it is hereby ORDERED THAT:

The aforesaid Motion is granted, and the automatic stay of 11 U.S.C. 362(a) as imposed against City Bank with respect to the Debtor, Debtor's Estate, and that certain real property located at 3345 Ala Akulikuli Street, Honolulu, Hawaii 96818 (hereinafter "Property"), of which a copy of the description of the Property is attached hereto as Exhibit "A", and made a part hereof, is terminated as of September 4, 2002; and

Further, that as of September 4, 2002, City Bank, its attorneys, its agents, any foreclosure commissioner or successor commissioner can proceed to exercise any and all of their rights and remedies with respect to the Property, including but not limited to, foreclosure of City Bank's Mortgage against the Property and recovery of possession of said Property.

IT IS FURTHER HEREBY ORDERD, ADJUDGED AND DECREED that the relief is being granted "in rem" because the Debtor and other persons who claim an interest in the Property have not acted in good faith to reorganize or seek discharge of their debts under the Bankruptcy Code but, rather have used the filing of a bankruptcy case as an obstruction to a lender's efforts to foreclose on mortgaged property. As used herein, "in rem" relief

means that the relied from stay is granted not only personally against Debtor but with respect to the Property; and shall be deemed binding and of full force and effect in any subsequent bankruptcy case, whether commenced by a debtor in this case or any another individual or entity claiming an interest in the Property. This in rem relief shall be effective only until the earlier of (i) 240 days after the date of entry of this order, or (ii) the recovery of possession by a purchaser at a judicial or non-judicial sale upon foreclosure of the subject mortgage.

It is hereby ordered that City Bank may not obtain a deficiency judgment without further order of this Court.

DATED: Honolulu, Hawaii, September 9, 2002.

/S/ ROBERT J. FARIS
Judge of the Above-Entitled Court

2. **Order Denying the Abad Defendant's Rule 606(b)Motion to Set Aside Filed April 25, 2006**

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT [OF THE] STATE OF HAWAII

CITY BANK, Plaintiff, vs. ARTEMIO MARCOS ABAD, INDIVIDUALLY AND AS TRUSTEE OF THE ARTEMIO M. ABAD REVOCABLE TRUST; GLORIA PASCUA ABAD, INDIVIDUALLY AND AS TRUSTEE OF THE GLORIA P. ABAD REVOCABLE TRUST; JENNIFER ABAD,; FELIX PASCUA; FINANCE FACTORS, LIMITED; DIRECTOR OF BUDGET AND FISCAL SERVICES, CITY AND COUNTY OF HONOLULU; JOHN DOES 1-50; JANE DOES 1-50; DOE PARTNERSHIPS 1-50; DOE CORPORATIONS 1-50; DOE "NON-PROFIT" CORPORATIONS 1-50; and DOE GOVERNMENTAL UNITS 1-50, Defendants,	) CIVIL NO. 01-1-0995-03) (Foreclosure))) ORDER DENYING THE ABAD DEFENDANTS' RULE 606(b)(4) MOTION TO SET ASIDE: (1) FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER GRANTING DEFENDANT AND THIRD-PARTY PLAINTIFF FINANCE FACTORS, LIMITED'S MOTION FOR DEFAULT JUDGMENT AGAINST DEFENDANTS ARTEMIO MARCOS ABAD, INDIVIDUALLY AND AS TRUSTEE OF THE ARTEMIO M. ABAD REVOCABLE TRUST, GLORIA P. ABAD, INDIVIDUALLY AND AS TRUSTEE OF THE GLORIA PASCUA ABAD REVOCABLE TRUST, JENNIFER ABAD AND FELIX PASCUA AND SUMMARY JUDGMENT AS TO ALL OTHER

and	) PARTIES AND FOR
	) INTERLOCUTORY
FINANCE FACTORS, LIMITED,	) DECREE OF FORECLOSURE AS TO
	) ALL CLAIMS AND ALL
Third-Party Plaintiff,	) PARTIES FILED ON MAY 24, 2001, FILED
	) ON MARCH 4, 2002,
vs.	) AND
	) (2) FINDINGS OF FACT,
AMERICAN GENERAL FINANCE, INC., ERLINDA GONZALES and WILSON U. PASCUA, Individually and doing business AS HONLAND REALTY,	) CONCLUSIONS OF LAW AND ORDER GRANTING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT ON ALL CLAIMS AND AGAINST ALL PARTIES,
Third-Party Defendants.	) INTERLOCUTORY DECREE OF FORECLOSURE AND ORDER OF SALE, FILED FEBRUARY 6, 2002, AND
	) (3) ALL SUBSEQUENT ORDERS, JUDGMENTS, COMMISSIONER'S DEEDS, TITLE TRANSFERS, AND WRITS IN THIS ACTION ENTERED PURSUANT THERETO
	)
	) Hearing
	) Date: March 14, 2006
	) Time: 9:30 a.m.
	) Judge: Hon. Karen N. Blondin

ORDER DENYING THE ABAD DEFENDANT'S RULE 60(b)(4) MOTION TO SET ASIDE1) FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER GRANTING DEFENDANT AND THIRD-PARTY PLAINTIFF FINANCE FACTORS, LIMITED'S MOTION FOR DEFAULT JUDGMENT AGAINST DEFENDANTS ARTEMIO MARCOS ABAD, INDIVIDUALLY AND AS TRUSTEE OF THE ARTEMIO M. ABAD REVOCABLE TRUST, GLORIA P. ABAD,INDIVIDUALLY AND AS TRUSTEE OF THE GLORIA PASCUA ABAD REVOCABLE TRUST, JENNIFER ABAD AND FELIX PASCUA AND SUMMARY JUDGMENT AS TO ALL OTHER PARTIES AND FOR INTERLOCUTORY DECREE OF FORECLOSURE AS TO ALL CLAIMS AND ALL PARTIES FILED ON MAY 24, 2001, FILED ON MARCH 4, 2002, AND (2) FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER GRANTING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT ON ALL CLAIMS AND AGAINST ALL PARTIES, INTERLOCUTORY DECREE OF FORECLOSURE AND ORDER OF SALE, FILED FEBRUARY 6, 2002, AND 3) ALL SUBSEQUENT ORDERS, JUDGMENTS, COMMISSIONER'S DEEDS, TITLE TRANSFERS, AND WRITS IN THIS ACTION ENTERED PURSUANT THERETO

The Abad Defendants' Rule 60(b)(4) Motion to Set Aside: (1) Findings of Fact, Conclusions of Law and Order granting Defendant and Third-Party Plaintiff Finance Factors, Limited's Motion for Default Judgment against Defendant's Artemio Marcos Abad, Individually and as Trustee of the Artemio M. Abad Revocable Trust, Gloria P. Abad, Individually and as Trustee of the Gloria Pascua Abad Revocable Trust, Jennifer Abad and Felix Pascua and Summary Judgment as to all Other Parties and for Interlocutory Decree of Foreclosure as to all Claims and all Parties filed on May 24, 2001, filed on March 4, 2002 and (2) Findings of

Fact, Conclusions of Law and Order Granting Plaintiff's Motion for Summary Judgment on all claims and against all Parties, Interlocutory Decree of Foreclosure and Order of Sale, filed February 6,2002, and (3) Al Subsequent Orders, Judgments, Commissioner's Deeds, Title Transfers, and Writs in this Action Entered Pursuant Thereto, filed herein on February 21, 2001 (hereinafter "Motion to Set Aside") came on for hearing before this Honorable Court on March 14, 2006 at 9:30 a.m. Mitzi A. Lee appeared on behalf of Plaintiff Central Pacific Bank, successor by merger to City Bank, Paul B.K. Wong appeared on behalf of Defendant Finance Factors, Limited; and Gary Victory Dubin appeared on behalf of the Abad Defendants.

Having heard the arguments of counsel, and having reviewed the Motion to Set Aside, the opposition thereto and the files and pleadings herein and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Motion to Set Aside is hereby DENIED.

DATED: Honolulu, Hawaii, April 25, 2006.

/S/ KAREN N. BLONDIN
Judge of the Above-Entitled Court

3. Hawaii Intermediate Court of Appeals Summary Disposition Order, Dated December 28, 2009

No. 27953

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAI'I

CITY BANK,
Plaintiff/Counterclaim Defendant/Appellee,

v.

ARTEMTIO MARCOS ABAD, INDIVIDUALLY AND AS TRUSTEE OF THE ARTEMIO M. ABAD REVOCABLE TRUST; GLORIA PASCUA ABAD, INDIVIDUALLY AND AS TRUSTEE OF THE GLORIA P. ABAD, REVOCABLE TRUST; JENNIFER ABAD, Defendants/Cross-Claim Defendants/Appellants, and FINANCE FACTORS, LIMITED, Defendant/Cross-claimant/Counterclaimant/Appellee; DIRECTOR OF BUDGET AND FISCAL SERVICES, CITY AND COUNTY OF HONOLULU, Defendants/Cross-Claim Defendants/Appellees; and FELIX PASCUA; JOHN DOES 1-50; JANE DOES 1-50; DOE PARTNERSHIPS 1-50; DOE CORPORATIONS, DOE "NON-PROFIT" CORPORATIONS 1-10, and GOVERNMENTAL UNITS 1-10, Defendants; and FINANCE FACTORS, LIMITED, Thirf-Party Plaintiff-Appellee, v. AMERICAN GENERAL FINANCE, INC., Third-Party Defendant-Appellee, and ERLINDA GONZALES and WILSON U. PASCUA, individually and doing business as HONLAND REALTY, Third-Party Defendants

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(CIVIL NO. 01-1-0995)

SUMMARY DISPOSITION ORDER
(By: Foley, Presiding Judge, Fujise and Leonard, JJ.)

In this appeal from a post-judgment proceeding in a foreclosure lawsuit, Defendants/Cross-Claim Defendants/Appellants Artemio Marcos Abad, Gloria Pascua Abad and Jennifer Abad (the Abad Defendants) appeal from the April 25, 2006 "Order Denying the Abad Defendants' Rule 60 (b)(4) Motion to Set Aside: (1)Findings of Fact, Conclusions of Law and Order Granting Defendant and Third Party Plaintiff Finance Factors, Limited's Motion for Default Judgment Against Defendants Artemio Marcos Abad, Individually and as Trustee of the Artemio M. Abad Revocable Trust, Gloria P. Abad. Individually and as Trustee of the Gloria Pascua Abad Revocable Trust, Jennifer Abad and Felix Pascua and Summary Judgment as to All Other Parties and for Interlocutory Decree of Foreclosure as to All Claims and All Parties Filed on May 24, 2001, Filed on March 4, 2002,[1] (2) Findings of Fact, Conclusions of Law and Order Granting Plaintiff's Motion for Summary Judgment on All Claims and Against All Parties, Interlocutory Decree of Foreclosure and Order of Sale, Filed February 6, 2002,[2] and (3) All Subsequent Orders, Judgments, Commissioner's Deeds, Title Transfers, and Writs in this Action Entered Pursuant Thereto" (the April 25,

[1] Hereinafter referred to as the "March 4, 2002 Foreclosure Order."

[2] This order was filed on June 20, 2002 and is hereinafter referred to as "the June 20, 2002 Foreclosure Order."

2006 Post-Judgment Order) entered by the Circuit Court of the First Circuit (circuit court).[3]

The Abad Defendants argue on appeal that the circuit court erred

> in denying [Hawai'i Rules of Civil Procedure (HRCP)] Rule 60 (b)(4) relief as it originally lacked jurisdiction, pursuant [to] the automatic stay provisions of Section 362 of Tile [sic] 11 of the United States Code and the decision of the Intermediate Court of Appeals held in Island Insurance Co., Inc. v. Santos, 86 [Hawai'i], 363, 949 P.2d 203 (App. 1997), to auction the subject properties and to confirm the subject foreclosure sales.

BACKGROUND

In order to purchase real estate in Pearl City[4] (the Pearl City Property) and Salt Lake[5] (the Salt Lake Property), the Abad Defendants obtained loans from City Bank Defendant/Cross-claimant/Counterclaimant/Third-Party Plaintiff/Appellee Finance Factors, Limited (Finance Factors), and Third-Party Defendant/Appellee American General Finance, Inc. (American General). The Abad Defendants mortgage the Pearl City Property and the Salt Lake Property to Finance Factors. The Abad Defendants additionally mortgaged the Sale Lake Property to City Bank. The Abad Defendants additionally mortgaged the Pearl City Property to

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[3] The Honorable Karen N. Blondin presided.

[4] This property is located at 98-1457 Ho'omāhie Loop, Pearl City, Hawai'i.

[5] This property is located at 3345 'Āla Akulikuli Street, Honolulu, Hawai'i.

American General. The Abad Defendants eventually defaulted on some of the loans.

City Bank filed a complaint to foreclose on the Salt Lake Property against the Abad Defendants, Finance Factors, Defendants/Cross-Claim Defendants/Appellees the Director of Budget and Fiscal Services of the City and County of Honolulu (the City) and Felix Pascua.

Finance Factors asserted a counterclaim for foreclosure against City Bank and a cross-claim for foreclosure against the Abad Defendants, the City, and Felix Pascua. Finance Factors also asserted a third-party complaint for foreclosure against American General, and Third-Party Defendants Erlinda Gonzales (Gonzales) and Wilson U. Pascua doing business as Honland Realty (Wilson Pascua).

Thereafter, the following events occurred:

- The circuit court entered the March 4, 2002 Foreclosure Order, granting Finance Factor's motion for default judgment against the Abad Defendants and Felix Pascua, and summary judgment against all other parties on Finance Factor's counterclaim, Finance Factor's cross-claims, and Finance Factor's third-party claims.

- On March 4, 2002, the circuit court entered an HRCP Rule 54(b) certified judgment of foreclosure in favor of Finance Factors and (a) against City Bank on Finance Factors's counterclaim, (b) against the Abad Defendants, the City, and Felix Pascua on Finance Factors' cross-claim, and (c) against American General, Gonzales, and Felix Pascua on Finance Factor's third-party complaint.

• The circuit court entered the June 20, 2002 Foreclosure Order granting City Bank's motion for summary judgment against the Abad Defendants, Finance Factors, the City and Felix Pascua on City Bank's complaint for foreclosure.

• On June 20, 2002, the circuit court entered an HRCP 54(b) certified judgment of foreclosure in favor of City Bank and against the Abad Defendants, Finance Factors, the City, and Felix Pascua as to City Bank's complaint for foreclosure.

• On August 8, 2002, the United States Bankruptcy Court for the District of Hawai'i (Bankruptcy Court) granted Finance Factor's unopposed motion for relief from the automatic stay caused by the filing of Gloria Abad's bankruptcy petition. This relief from the stay was granted "'in rem' because the Debtor and other persons who claim an interest in the Property have not acted in good faith to reorganize or seek discharge of their debts. . . . As used herein, 'in rem' relief means that the relief from stay is granted not only personally against the Debtor but with respect to the subject property."

• After a motion and hearing, the Bankruptcy Court granted City Bank relief from the automatic stay created by Gloria Abad's petition for bankruptcy. This September 9, 2002 order was also granted "in rem" but applied to the Salt Lake Property only. Notice of this order was served on the Abad Defendants' attorney on September 13, 2002.

• On October 8, 2002, the foreclosure auction for the Salt Lake Property and the Pearl City Property occurred.

• On November 14, 2002, Gloria Pascua Abad filed a notice of appeal from the June 20, 2002 Foreclosure Order, which the supreme court clerk docketed as supreme court case number 25474.

• On November 14, 2002, the Abad Defendants moved the circuit court to set aside the March 4, 2002 Foreclosure Order pursuant to HRCP 60(b), arguing that the circuit court lacked subject matter jurisdiction based on their claim that the mortgage loan was void as it was made with an unlicensed mortgage broker.

• On December 24, 2002, the circuit court denied the Abad Defendants' HRCP 60(b) motion to set aside the March 4, 2002 Foreclosure Order.

• On January 15, 2003, the Abad Defendants filed a notice of appeal from the December 24, 2002 order denying the Abad Defendants' HRCP 60(b) motion to set aside the March 4, 2002 Foreclosure Order, which the supreme court clerk docketed as supreme court case number 25587.

• On February 12, 2003, the circuit court entered an order and HRCP Rule 52(b)-certified judgment confirming the sales of the Salt Lake Property and the Pearl City Property to third-party purchasers and directing the distribution of the sales proceeds.

• On March 14, 2003, the Abad Defendants filed a notice of appeal from the February 12, 2003 order and the February 12, 2003 HRCP 54(b) judgment, which the supreme court clerk docketed as supreme court case number 25693.

• On January 12, 2005, we issued a published opinion on the consolidated appeals of supreme court case numbers 25474, 25587, and 25693 that

dismissed parts of the appeal and affirmed the orders that were the subject of the remaining parts of the appeal. City Bank v. Abad, 106 Hawai'i 406, 105 P.3d 1212 (App. 2005) (Abad I). In this opinion, we

- Dismissed the appeal in number 25474 as untimely,

- Dismissed the appeal in number 25693 as untimely in part and premature in part, and

- In number 25587, dismissed the appeal from the circuit court's November 14, 2002 oral confirmation of the foreclosure sales and affirmed the December 24, 2002 order denying the Abad Defendants' November 14, 2002 HRCP Rule 60(b) motion.

In so doing, we ruled that the Abad Defendants had not shown the Bankruptcy Court's "in rem" orders lifting the automatic bankruptcy stay as to Finance Factors and City Bank were invalid, either because the Bankruptcy Court "lacked jurisdiction of the parties or otherwise acted in a manner inconsistent with due process of law." Abad I, 106 Hawai'i at 411, P.3d at 1217.[6]

- Central Pacific Bank became City Bank's successor-in-interest in this case as the result of a corporate merger between Central Pacific Bank and City Bank.

On February 21, 2006, the Abad Defendants again moved the circuit court pursuant to HRCP Rule 60(b) to set aside (1) the March 4, 2002

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[6] A copy of the ICA's prior published opinion in Abad I, 106 Hawaii 406, P.3d 1212, is attached to Appendix 1 as Exhibit "B".

Foreclosure Order, (2) the June 20, 2002 Foreclosure Order, and (3) all subsequent orders and judgments that the circuit court entered pursuant thereto. The circuit court denied this motion by way of its April 25, 2006 Post-Judgment Order.[7] On May 24, 2006, the Abad Defendants filed a notice of appeal from the April 25, 2006 Post-Judgment order.

JURISDICTION

Before we consider the merits of this appeal, we must decide whether we have jurisdiction to consider this matter. "An appellate court has . . . an independent obligation to ensure jurisdiction over each case to dismiss the appeal sua sponte if a jurisdictional defect exits." State v. Graybeard, 93 Hawai'i 513, 516, 6 P.3d 385, 388 (Ap. 2000).

This is an appeal from a post-judgment order. Hawaii Revised Statutes (HRS) § 641-1(a) (Supp. 2005) authorizes appeals from final judgments, orders or decrees. "A post-judgment order is an appealable final order under HRS § 641-1(a) if the order ends the proceedings, leaving nothing further to be accomplished." Ditto v. McCurdy, 103 Hawai'i 153, 157, 80 P.3d 975, 978 (2003). Although, for the purpose of appealability, a separate judgment is usually necessary under HRCP Rule 58 and the holding in Jenkins v. Cades Schutte Fleming & Wright, 76 Hawai'i 115, 119, 869 P.2d 1334, 1338, (1994), "the separate judgment requirement articulated in Jenkins is inappropriate in the post-

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[7] The Circuit Court's April 25, 2006 Order denying Petitioners' Rule 60(b) motion, located in the Record on Appeal, Volume 7 at 130-33, is attached to Appendix 1 hereto as Exhibit "C".

judgment context." Ditto, 103 Hawai'i at 158, 80 P.3d at 979.

Accordingly, we initially appear to have jurisdiction over this appeal pursuant to HRS § 641-1(a).

However,

A case is moot if it has lost its character as a present, live controversy of the kind that must exist if courts are to avoid advisory opinions on abstract propositions of law. The rule is one of the prudential rules of judicial self-governance founded in concern about the proper - -and properly limited – role of the courts in a democratic society. We have said the suit must remain alive throughout the course of litigation to the moment of final appellate disposition to escape the mootness bar . . . . Simply put, a case is moot if the reviewing court can no longer grant effective relief.

Kaho'ohanohano v. State. 114 Hawai'i 302, 332, 162 P.3d 696, 726 (2007) (emphasis removed, citations, internal quotation marks, and brackets omitted, and format altered).

Thus, for example, in an appeal from a foreclosure case, the defendants failure to stay the effect of an order confirming a foreclosure sale of property to a third-party, which apparently was a good faith purchaser, rendered moot the defendants' appeal from the order confirming the sale. City Bank v. Saje Ventures II, 7 Haw. App. 130, 132, 748 P.2d 812, 814 (1988). In support of the decision, we relied on the general rule that "the right of a good faith purchaser to receive property acquired at a judicial sale cannot be affected by the reversal of an

order ratifying the sale where a supersedeas bond has not been filed." Id. at 133, 748 P.2d at 814 (internal quotation marks and citation omitted).

Since the Saje Defendants did not stay the effect of the confirmation order and since there has been a closing of the sale of the Property to Outrigger which cannot be undone under the facts and the law, we cannot grant the relief sought by the Saje Defendants. Therefore, the appeal is moot and must be dismissed.

Id. at 132, 748 P.2d at 814.

In the instant case, the Abad Defendants did not file a supersedeas bond and obtain a court order staying the February 12, 2003 judgment confirming the foreclosure sales. Like the Debtor in City Bank v. Saje Ventures II, the Abad Defendants ask this court to reverse the April 25, 2006 Post-Judgment Order, although they did not file a supersedeas bond and obtain a court order staying the February 6, 2003 order and judgment confirming the foreclosure sale.

Granted, "[a]n exception to the rule is where the reversal is based on jurisdictional grounds[,]" and the Abad Defendants are arguing that the circuit court lacked jurisdiction to enter the February 12, 2003 order and judgment confirming the foreclosure sale. Nevertheless, an examination of the Abad Defendant's prior appeal and our decision in Abad I, shows that the Abad Defendants were raising the same jurisdiction argument that was rejected by this court in Abad I. In Abad I, this court held that the Abad Defendants failed to carry their burden on appeal, that is to say, did not show that the Bankruptcy Court's order lifting its stay over the

properties in question was invalid and thus rejected the Abad Defendants' argument that the circuit court lacked jurisdiction to confirm the sales of the properties in this case.

It is true that the Supreme Court of Hawai'i has explicitly recognized three exceptions to the mootness doctrine:

> (1) the "capable of repetition, yet evading review" exception (the CRER exception);
> (2) the public interest exception; and
> (3) the collateral consequences exception.

Hamilton Ex Rel Lethem v. Lethem, 119 Hawai'i 1, 5-10, 193 P.3d 839, 843-48 (2008). However, one of these exceptions applies to the instant case.

With regard to the CRER exception:,

> [t]he phrase, "capable of repetition, yet evading review," means that a court will not dismiss a case on the grounds of mootness where a challenged governmental action would evade full review because the passage of time would prevent any single plaintiff from remaining subject to the restriction complained of for the period necessary to complete the lawsuit.

Lethem, 119 Hawai'i at 5, 193 P.3d at 843 (citation and some internal quotation marks omitted). The CRER exception to the mootness doctrine does not appear to apply to the instant case because the instant case would not evade review but for the fact that the Abad Defendants chose not to file a supersedeas bond. Therefore, the CRER exception to the mootness doctrine does not apply to the instant case.

With regard to the public interest exception, the Supreme Court of Hawai'i has explained that, "[w]hen analyzing the public interest exception, this court looks to (1) the public or private nature of the question presented, (2) the desirability of an authoritative determination for future guidance of public officers, and (3) the likelihood of future recurrence of the question." Lethem, 119 Hawai'i at 6-7, 193 P.3d at 844-45 (citation, internal quotation mark, and brackets omitted). The public interest exception to the mootness doctrine does not appear to apply to the instant case because (1) foreclosure case arises out of a private contract between parties that does not involve the government, and, thus, foreclosure is more of a dispute of a private nature rather than a public nature, (2) an authoritative determination for future guidance already exists within the holding in Saje Ventures II, 7 Haw. App. At 132, 748 P.2d at 814, and (3) the questions within the instant case will recur only when parties choose not to file a supersedeas bond to stay the circuit court's ruling pending appeal. Therefore, the public interest exception to the mootness doctrine does not appear to apply to the instant case.

With regard to the collateral consequences exception, the Supreme Court of Hawai'i has "adopted the collateral consequences to the mootness doctrine in cases involving domestic violence TROs where there is a reasonable possibility that prejudicial collateral consequences will occur as a result of the entry of the TRO." Lethem, 119 Hawai'i at 9-10,193 P.3d at 847-48 (internal quotation marks omitted). The collateral consequences exception to the mootness doctrine does not apply to the instant case because the instant case does not involve

domestic violence or a temporary restraining order. Furthermore, the Abad Defendants could have avoided any prejudicial collateral consequences if they filed a supersedeas bond to stay the circuit court's ruling pending this appeal. Therefore, the collateral consequences exception to the mootness doctrine does not apply to the instant case.

Our disposition makes in unnecessary to reach the Abad Defendants' other arguments on appeal.

CONCLUSION

Therefore, this appeal from the April 25, 2006 Post-Judgment Order of the Circuit Court of the First Circuit is hereby dismissed.

DATED: Honolulu, Hawai'i, December 28, 2009.

4. **Hawaii Supreme Court of the State of Hawaii Order Rejecting Application for Writ of Certiorari, Filed May 21, 2010**

NO. 27953

IN THE SUPREME COURT
OF THE STATE OF HAWAII

CITY BANK,
Respondent/Plaintiff/Counterclaim-Defendant
Appellee,

vs.

ARTEMIO MARCOS ABA, INDIVIDUALLY AND AS TRUSTEE OF THE ARTEMIO M. ABAD REVOCABLE TRUST; GLORIA PASCUA ABAD, INDIVIDUALLY AND AS TRUSTEE OF THE GLORIA P. ABAD REVOCABLE TRUST; JENNIFER ABAD,
Petitioners/Defendants/Cross-Claim
Defendants/Appellants,

and

FINANCE FACTORS, LIMITED,
Respondent/Defendant/Cross-
claimant/Counterclaimant/Appellee,

and

DIRECTOR OF BUDGET AND FISCAL SERVICES, CITY AND COUNTY OF HONOLULU,

Respondents/Defendants/Cross-Claim
Defendants/Appellees;

FELIX PASCUA; JOHN DOES 1-50; JANE DOES 1-50; DOE PARTNERSHIPS 1-50; DOE CORPORATIONS, DOE "NON-PROFIT"

CORPORATIONS 1-10, and DOE GOVERNMENTAL UNITS 1-50, Defendants;

and

FINANCE FACTORS, LIMITED, Third-Party Plaintiff-Appellee,

vs.

AMERICAN GENERAL FINANCE, INC., Third-Party Defendant-Appellee,

and

ERLINDA GONZALES and WILSON U. PASCUA, individually and doing business as HONLAND REALTY, Third-Party Defendants.

CERTIORARI TO THE INTERMEDIATE COURT OF APPEALS
(CIV. NO. 01-1-0995)

ORDER REJECTING APPLICATION FOR WRIT OF CERTIORARI

(By: Nakayama, J., for the court)

Petitioners' application for writ of certiorari filed on April 14, 2010, is hereby rejected.

DATED: Honolulu, Hawai'i, May 21, 2010.

FOR THE COURT:

/S/ PAULA C. NAKAYAMA
Associate Justice